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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

KATHLYNE ALYCIA SMART,

Defendant and Appellant.

C070273

(Super. Ct. No. 10F01471)

In March 2010, sheriff's deputies investigating a complaint of banging and screaming at a Sacramento apartment discovered the victim, a 41-year-old man, who had a large burn and ligature marks on his neck, fresh and dried blood on his face, and multiple bruises and scrapes.¹ Defendant Kathlyne Alycia Smart was present with her

¹ Because the matter was resolved by plea, our statement of facts is taken from the probation officer's report.

son and daughter-in-law who were codefendants in the trial court but are not parties to this appeal.

The victim ultimately told police that three people had held him hostage and had tortured him for two days. The victim explained he had argued with defendant, who was his girlfriend, and when the argument escalated she stabbed him with a fork. Then she telephoned the son and daughter-in-law who arrived with handguns; the duo ordered the victim to the ground and then handcuffed, pistol-whipped, punched and kicked him. Defendant kicked the victim as well. The three assailants put rope around the victim's neck and choked him to unconsciousness at least 10 times. The son used pliers in an unsuccessful attempt to remove the victim's teeth.

The son told the victim his white supremacist gang tattoos had to be removed. He gave the victim a choice of having them cut off or burned off. The victim chose burning. The son used a propane torch to burn a swastika from the victim's neck.

Defendant pled no contest to mayhem, specifically, unlawfully and maliciously disabling, disfiguring, rendering useless, and depriving the victim of a member of his body, to wit, his neck. (Pen. Code, § 203.) In exchange, three related counts were dismissed.

Defendant was sentenced to state prison for eight years, awarded 657 days' custody credit and 98 days' conduct credit, and ordered to pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$200 restitution fine suspended unless parole is revoked (Pen. Code, § 1202.45), a \$40 court operations fee (Pen. Code, § 1465.8, subd. (a)(1)), and a \$30 court facilities assessment (Gov. Code, § 70373).

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief

within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Our review discloses a minor error on the abstract of judgment. Defendant's conduct credits were calculated pursuant to Penal Code section 2933.1, not Penal Code section 4019. The abstract must be corrected to so indicate.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect that conduct credit was calculated pursuant to Penal Code section 2933.1. A certified copy of the corrected abstract shall be forwarded to the Department of Corrections and Rehabilitation.

NICHOLSON, Acting P. J.

We concur:

HULL, J.

ROBIE, J.